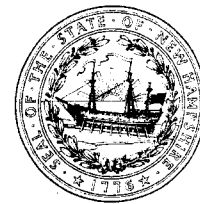




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Charles Capistran
d/b/a Julien Richard Company
281 Rhode Island Ave.
Manchester, NH 03104

Re: Cleveland Street, Manchester, NH
AST Facility No. 200306072

ADMINISTRATIVE ORDER
No. WMD 05-005

July 27, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Waste Management Division to Charles Capistran d/b/a Julien Richard Company pursuant to RSA 146-A:11-c. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Charles Capistran is an individual registered to do business as "Julien Richard Company" in New Hampshire and having a mailing address of 281 Rhode Island Ave., Manchester, NH 03104.

C. STATEMENTS OF FACTS AND LAW

1. RSA 146-A authorizes DES to minimize contamination of the waters and land of the state due to improper storage and handling of petroleum by establishing requirements for the operation of aboveground petroleum storage facilities. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Admin. Rules Env-Wm 1402 to establish requirements for the registration, design, installation, operation, maintenance, and monitoring of above-ground petroleum storage facilities.
2. Charles Capistran d/b/a Julien Richard Company is the registered facility owner of two 12,000-gallon horizontal aboveground storage tanks ("ASTs") that contain heating oil and are located at Cleveland Street, Manchester, NH, and further identified by the DES site number 200306072 and the AST identification number 0000165 located at Manchester Tax Map #0196, Lot #0004 ("the Property").
3. The AST systems at the Facility are subject to the requirements of RSA 146-A and Env-Wm 1402.

4. On November 20, 2003, DES inspectors conducted a compliance inspection at the Facility. Compliance deficiencies were identified in a letter from DES dated November 24, 2003, issued to the registered owner, notifying him that compliance was to be achieved within 45-days of the date of the letter in order to avoid enforcement action per RSA 146-A:15 and Env-C 600 for those deficiencies.
5. In a letter dated December 16, 2004, DES again notified Mr. Capistran of the deficiencies identified during the November 20, 2003 inspection, and notified him that enforcement action would be initiated if the deficiencies were not corrected within 30-days.
6. DES has not been notified that the following deficiencies have been corrected:
 - a) failure to prepare and implement a Spill Prevention, Control, and Countermeasures Plan ("SPCC Plan") Plan prepared in accordance with Title 40 of the Code of Federal Regulations, Part 112 ("40 CFR Part 112");
 - b) failure to install gauges or other measuring devices on the ASTs, and failure to have a high level warning alarm that is both audible and visible to the person controlling the transfer of oil to the ASTs; and
 - c) failure to mark the ASTs with the tank number, the safe fill height of the tank, the product stored, and the NFPA symbol.
7. Env-Wm 1402.30 requires that all AST facilities shall have a written SPCC prepared in accordance with 40 CFR Part 112.
8. Env-Wm 1402.35(a) required that all AST systems installed prior to April 25, 1997, have overfill protection consisting of a product level gauge in accordance with Env-Wm 1402.24(a) and a high level alarm in accordance with Env-Wm 1402.24(b) by April 25, 2000.
9. Env-Wm 1402.35(c) requires that all AST systems installed prior to April 25, 1997, have tank markings as described in Env-Wm 1402.18(e) by April 25, 2000.

D. DETERMINATION OF VIOLATIONS

1. Charles Capistran has violated Env-Wm 1402.30 by failing to prepare and implement a SPCC Plan prepared in accordance with 40 CFR Part 112.
2. Charles Capistran has violated the overfill protection requirements of Env-Wm 1402.35(a) by failing to install gauges or other measuring devices on the AST systems, and for failing to have a high level warning alarm that is both audible and visible to the person controlling the transfer of oil to the AST systems.
3. Charles Capistran has violated the marking requirements of Env-Wm 1402.35(c) by failing to mark the AST systems with the tank number, the safe fill height of the tank, the product stored, and the NFPA symbol.

E. ORDER

Based on the above findings, DES hereby orders Charles Capistran as follows:

1. **Within 30 days** from the date of this order, prepare and implement a SPCC Plan prepared in accordance with 40 CFR Part 112.
2. **Within 30 days** from the date of this order, install product level gauges in accordance with Env-Wm 1402.24(a) and a high level alarm in accordance with Env-Wm 1402.24(b).
3. **Within 30 days** from the date of this order, mark the ASTs with the tank number, the safe fill height of the tank, the product stored, and the NFPA symbol as described in Env-Wm 1402.18(f).
4. **Within 30 days from** the date of this order, provide written confirmation to DES that the tasks required by 1, 2, and 3 above have been completed in accordance with this order.
5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Michael W. Juranty, P.E.
DES Waste Management Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-2181
E-mail: mjuranty@des.state.nh.us

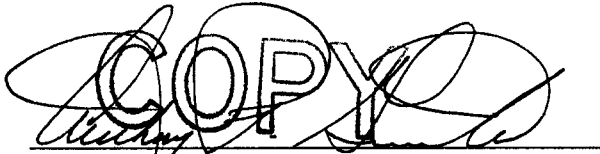
F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-Wmc-C 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve Charles Capistran of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 146-A:14 and 15 provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor Charles Capistran's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Hillsborough County Registry of Deeds so as to run with the land.



Anthony P. Giunta, P.G., Director
Waste Management Division



Michael P. Nolin, Commissioner
Department of Environmental Services

cc: Michael J. Walls, DES Assistant Commissioner
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Public Information Officer, DES PIP Office
Gretchen R. Hamel, DES Legal Unit Administrator
Lynn A. Woodard, P.E., Supervisor
Michael W. Juranty, P.E., Chief
Chief, Manchester Fire Department